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RECEIVED and FILED by the  
NEW JERSEY STATE BOARD OF  
VETERINARY MEDICAL EXAMINERS  
on this date of: 4-27-01

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STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF VETERINARY MEDICAL EXAMINERS

IN THE MATTER OF A DISCIPLINARY  
ACTION AGAINST THE LICENSE OF

Phillip DeBaecke, D.V.M.  
License No. VI004514

TO PRACTICE AS A VETERINARIAN  
IN THE STATE OF NEW JERSEY

Administrative Action

FINAL DECISION AND ORDER  
AFTER UPL EXPLANATION

This matter was opened to the New Jersey Board of Veterinary Medical Examiners (hereinafter the "Board") on an investigation of a complaint filed by the New Jersey Veterinary Medical Association (hereinafter NJVMA) against respondent, Phillip DeBaecke, D.V.M. (hereinafter "respondent"). On December 21, 2000, the Board received from NJVMA a letter with a copy of the advertisements circulated by respondent. NJVMA questioned whether respondent's advertisements contained any violations. The Board reviewed the letter and the advertisements which were referred to by NJVMA. The complaint/investigation revealed probable violations of N.J.A.C. 13:44-4.8(b), N.J.A.C. 13:44-4.8(f) and N.J.A.C. 13:44-4.8(e)(2).

On January 29, 2001, a Uniform Penalty Letter (hereinafter "U.P.L.") was sent to respondent setting forth the initial findings of the Board and offering respondent the opportunity to settle this matter by acknowledging the violations and paying a civil penalty in the aggregate amount of \$750 for the above violations of N.J.A.C. 13:44-4.8. Specifically, the U.P.L. reflects the following:

1. A civil penalty for misleading advertising with the statement "100% vaccine warranty" in the advertisement for Banfield, The Pet Hospital appearing in the yellow pages of the Perth Amboy-Woodbridge area telephone book which is in violation of N.J.A.C. 13:44-4.8(b),

2. A civil penalty for the failure to provide the name of at least one licensee who is responsible for the provision of the advertised services for the advertisement in the PetSmart circular for the Banfield Pet Hospital at the Woodbridge facility which is in violation of N.J.A.C. 13:44-4.8(f) and

3. A civil penalty for the failure to provide a fixed or stated range of fees against which the "Discounts on prescriptions, surgery and emergency care" is to be applied for the advertisement in the PetSmart circular which is in violation of N.J.A.C. 13:44-4.8(e)(2).

In addition, the letter directed respondent to cease and desist from advertising in such manner.

Alternatively, respondent was given the option of either requesting a hearing before the Board or submitting a written explanation and waiving respondent's right to a hearing. Waiving the right to a hearing, respondent elected to submit a written explanation in which respondent maintained:

- a. Respondent acknowledged placing the advertisement in the yellow pages which read "100% Vaccine Warranty" but denied that it was misleading. Respondent claims that the warranty was not intended to mean that the vaccine was 100% effective rather that the warranty

promised veterinary services at no cost if the pet contracts the disease being vaccinated against.

b. The advertisement in the PetSmart circular was his and he admitted that the failure to include the licensee's name, address and telephone number of the Banfield Pet Hospital at the Woodbridge facility is a violation of the law. However, respondent asserted that through no fault of his own, the professional corporation which employs him was solely responsible for omitting this information.

c. Respondent states that he is actively trying to correct the error concerning the failure to include the name of the licensee responsible for the advertisement and requests dismissal of this charge be granted since he purportedly was not responsible for the omission of such information.

d. Respondent understands that when advertising a discount or fee reduction, the law requires setting forth a fixed or stated range of fees that the discount is to apply. Respondent contends that the PetSmart circular does not contain such a violation since the \$15 discount coupon applies to all services, and that setting forth a range of fees would not clarify the value of the coupon.

At its meeting on March 28, 2001, the Board considered the complaint and respondent's explanation. With respect to the charge of N.J.A.C. 13:44-4.8(b), the Board finds that the statement "100% vaccine warranty" is misleading to the general public. Respondent's explanation of the warranty to provide veterinary services at no cost if the pet contracts the disease being vaccinated against is unclear from a simple reading of the statement. Additionally, the Board finds that respondent failed to include the pertinent information as required under N.J.A.C. 13:44-4.8(f) of the licensee who was responsible for the advertisement in the PetSmart circular for the Banfield Pet Hospital at the Woodbridge facility. Despite, respondent's contention that it was no fault of his own rather than that of the professional corporation for which he is employed, respondent is presumed to have approved and is held responsible for the form and contents of the advertisement pursuant

to N.J.A.C. 13:44-4.8(g). Furthermore, with respect to the charge of N.J.A.C. 13:44-4.8(e)(2), the Board finds that respondent's advertisement in the PetSmart circular does not specifically delineate the amount of the discount nor the stated range of fees for which the "discounts on prescriptions, surgery and emergency care" is to be applied. Accordingly, the Board finds that respondent failed to conform to statutory and/or regulatory obligations as set forth in the U.P.L. and therefore, it concludes that the violations N.J.A.C. 13:44-4.8(b), N.J.A.C. 13:44-4.8(f) and N.J.A.C. 13:44-4.8(e)(2) occurred.

Based on the foregoing:

IT IS on this 27<sup>th</sup> day of APRIL, 2001,

ORDERED that:

1. Respondent shall pay to the Board of Veterinary Medical Examiners a total of \$834.68 which consists of a civil penalty in the amount of \$750 for the violations as set forth in the U.P.L. detailed above and costs in the amount of \$84.68 for the preparation of the Final Decision and Order. Said payment shall be made by certified check or money order payable to the State Board of Veterinary Medical Examiners and shall be delivered within ten (10) days of service of this Order to Diane Romano, the Executive Director at the Board of Veterinary Medical Examiners, P.O. Box 45020, Newark, New Jersey 07101. Failure to remit the payment required by this Order will result in the filing of a certificate of debt.

2. Respondent shall cease and desist from engaging in any of the conduct found herein to be unlawful.

NEW JERSEY STATE  
BOARD OF VETERINARY MEDICAL EXAMINERS

By:

  
Carolyn Self, D.V.M.  
President